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November 27, 2013

The Honorable Jocelyn G. Boyd  
Chief Clerk/Administrator  
Public Service Commission of South Carolina  
101 Executive Center Drive, Suite 100  
Columbia, SC 29210

**Re: Request for Waiver of Certain Regulatory Conditions  
Docket No. 2011-158-E**

Dear Mrs. Boyd:

The purpose of this letter is to request that the Public Service Commission of South Carolina ("Commission") waive the requirements of Regulatory Conditions 3.1(a) and (c), 3.10(c) and (e) and 5.4. In general, these conditions adopt certain requirements of the North Carolina utility statutes on affiliate transactions and require Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, Inc. ("DEP") to file affiliate agreements that South Carolina traditionally has not required utilities to file.

More specifically, 3.1(a) prevents DEC and DEP from engaging in any affiliate transactions in advance of informal review by the South Carolina Office of Regulatory Staff ("ORS") and "obtaining from the Commission such decisions as are required by North Carolina law." 3.1(c) requires DEC and DEP to file advance notice and a copy of proposed affiliate agreements that involve costs that will be assigned to DEC or DEP and which are required or intended to be filed with the Federal Energy Regulatory Commission ("FERC") and to delay such FERC filings if there is an objection to the filing.<sup>1</sup> 3.10(c) requires thirty days advance notice to the Commission of any FERC filing that has the potential to:

(i) affect DEC's or DEP's retail cost of service for system power supply resources or transmission system; (ii) reduce the Commission's jurisdiction with respect to transmission planning or any other aspect of the Commission's planning authority; (iii) be interpreted as involving DEC or DEP in joint planning, coordination dispatch, or operation of generation or transmission facilities with

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<sup>1</sup> If Regulatory Conditions 3.1(c)(i) and (ii) are waived, then 3.1(c)(iii) will not be relevant and 3.1(d) will be applicable only to 3.1(b).

one or more affiliates; or (iv) otherwise have an effect on DEC's or DEP's rates or service.

3.10(e) requires that, consistent with N.C. Gen. Stat. §62-153, DEC and DEP receive prior approval of proposed substantive revisions to affiliate agreements; and, 5.4 requires that:

- (a) DEC and PEC shall file [affiliate agreements pursuant to N.C. Gen. Stat. § 62-153 and shall also file] the list(s) of goods and services that DEC and PEC each intend to take from DEBS and PESC, the list(s) of goods and services DEC and PEC intend to take from each other and the Utility Affiliates, and the basis for the determination of such list(s) and the elections of such services. All such lists by DEC or PEC shall require acceptance and authorization by the Commission, and shall be subject to any other Commission action required or authorized by North Carolina law and the Rules and orders of the Commission.

5.4(b) sets out the notice DEC and DEP must give before changing the service agreements or list(s) of services.

These conditions have in common a desire to prevent FERC preemption and N.C. Gen. Stat. § 62-153 which requires, separate and apart from the merger conditions, DEC and DEP to file in North Carolina practically all affiliate agreements. South Carolina does not have a statute equivalent to N.C. Gen. Stat. § 62-153, and the Commission has not heretofore required the filing of affiliate agreements. Consequently, affiliate agreements, whether related to transactions that result in FERC filings or general affiliate activity, traditionally have not been filed in South Carolina. Nevertheless, Regulatory condition 5.4 implies that North Carolina law is applicable to South Carolina and requires the filing of most affiliate agreements.

Importantly, under South Carolina law and Commission practice, both the Commission and ORS can obtain all affiliate agreements whenever they deem appropriate. Additionally, DEC and DEP are not seeking a waiver of Regulatory Condition 3.1(b), which provides that every affiliate contract to which DEP or DEC is a party contain provisions preserving the Commission's authority to assign, allocate, impute, make pro-forma adjustments to, or disallow any revenues and costs for retail ratemaking and regulatory accounting and reporting purposes in whole or in part with regard to affiliate agreements. Finally, pursuant to Regulatory Condition 5.7, DEC and DEP must file annual reports of affiliated transactions<sup>2</sup>. This annual filing brings to the attention of the Commission each affiliated transaction, FERC related or not, and provides a consistent opportunity for the Commission and ORS to ask any questions or raise any issues it has with respect to goods and services DEC and DEP give and take from each other and their other affiliates and the specific transactions that occurred during the previous year.

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<sup>2</sup> This report was filed June 12, 2013.

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Therefore, DEC and DEP seek relief from Regulatory Conditions 3.1(a) and (c), 3.10 (c) and (e) and 5.4 because in South Carolina, the conditions do not provide any additional protection for South Carolina customers and have the potential to create undue confusion with the references to North Carolina law.

Thank you for your consideration of this request and please feel free to contact me if you have any questions.

Sincerely,



Timika Shafeek-Horton  
Deputy General Counsel

TSH/gw

cc: Nanette Edwards, ORS  
Courtney Edwards, ORS  
John Flitter, ORS